

1 Daniel A. Sasse (State Bar No. 236234)
dsasse@crowell.com
2 Chahira Solh (State Bar No. 248985)
csolh@crowell.com
3 CROWELL & MORING LLP
3 Park Plaza, 20th Floor
4 Irvine, California 92614-8505
Telephone: (949) 263-8400
5 Facsimile: (949) 263-8414

6 Attorneys for Defendant
YAMAHA CORPORATION OF AMERICA

7 [ADDITIONAL COUNSEL AND PARTIES APPEAR ON SIGNATURE PAGE]
8

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **IN RE MUSICAL INSTRUMENTS**
12 **AND EQUIPMENT ANTITRUST**
13 **LITIGATION**

CASE No. 3:09-md-02121-LAB-POR
(and related cases)

MDL No. 2121

14 **MEMORANDUM OF POINTS AND**
15 **AUTHORITIES REGARDING**
16 **DISCOVERY ISSUES**

17 **DISCOVERY MATTER**

18 Date: December 22, 2011
Time: 10:00 a.m.
Judge: Hon. Louisa S. Porter

crowellmoring

3 Park Plaza, 20th Floor
Irvine, CA 92614-8505
(949) 263-8400

1 After having previously negotiated a resolution to each of these disputes, Plaintiffs now
 2 appear to be focused on a new strategy of creating disputes to either improperly expand the scope
 3 of Judge Burns' Order of August 22, 2011 or as a way of delaying this matter. Defendants
 4 respectfully submit that the Court should deny all of Plaintiffs' requests.

5 **I. There is No Basis for Another Extension of the Discovery Deadline**

6 Plaintiffs' motion for another extension of time, until February 1, 2012, to engage in
 7 further discovery against all of the Defendants should be denied. There is no basis for extending
 8 the discovery deadline, which already has been extended once by the Court, upon stipulation
 9 between the parties. (*See* Dkt. No. # 153 (extending discovery deadline from December 1, 2011 to
 10 December 23, 2011)). Plaintiffs failed to proceed diligently in pursuing discovery from the
 11 Defendants and have had more than ample opportunity to notice and take the depositions they now
 12 claim they cannot complete prior to December 23, 2011. If, however, the Court is inclined to
 13 allow any discovery after December 23, 2011, such discovery should not be open-ended; it should
 14 be limited to completion of depositions that Plaintiffs already have specifically identified or
 15 noticed, but for which the deponent is unavailable to appear prior to the December 23, 2011
 16 deadline.

17 Plaintiffs must demonstrate "good cause" for another extension of the discovery deadline.
 18 *See* Fed. R. Civ. P. 16(b)(4); *Mondares v. Kaiser Foundation Hosp.*, 2011 WL 5374613, at * 1
 19 (S.D. Cal. Nov. 7, 2011) ("Federal Rule of Civil Procedure 16 provides a stringent standard
 20 whereby the party who seeks to amend the Court's scheduling order must show 'good cause' why
 21 the Court should set aside or extend a discovery deadline."). "Rule 16(b)'s 'good cause' standard
 22 primarily concerns the diligence of the party seeking the [extension]." *Johnson v. Mammoth*
 23 *Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992). "[C]arelessness is not compatible with a
 24 finding of diligence and offers no reason for a grant of relief. Although the existence or degree of
 25 prejudice to the party opposing the modification might supply additional reasons to deny a motion,
 26 the focus of the inquiry is upon the moving party's reasons for seeking modification." *Id.* Thus, if
 27 the party seeking modification was not diligent in his or her discovery requests, the inquiry should
 28

1 end there and the measure of relief sought from the Court should not be granted. *Zivkovic v. S.*
 2 *Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002).

3 Here, Plaintiffs cannot establish good cause for the proposed enlargement of the discovery
 4 period because they failed to act diligently in pursuing the discovery for which they now seek
 5 another extension. On August 22, 2011, Judge Burns ordered Plaintiffs to file an amended
 6 complaint by no later than September 12, 2011, and established December 1, 2011 as the deadline
 7 for limited discovery. *See* Dkt. No. 133 at 12-13. Nevertheless, after requesting a 10-day
 8 extension, Plaintiffs did not amend their Complaint until September 22, 2011,¹ and then waited
 9 until October 5, 2011—more than six weeks after Judge Burns’ issued his August 22, 2011 Order
 10 permitting limited discovery—to propound their first discovery request. They then served these
 11 requests on all Defendants by regular mail—despite the Joint Discovery Plan’s express
 12 requirement that all papers should be served electronically.²

13 Under the Federal Rules, Defendants’ written responses were due on November 7, 2011,
 14 approximately three weeks before the December 1, 2011 discovery deadline established by Judge
 15 Burns. Nevertheless, Plaintiffs did not request that Defendants respond in a shortened amount of
 16 time, even though they had an opportunity to do so during the October 4, 2011 status conference
 17 or at any other time. Instead, Plaintiffs were content to receive written responses to their
 18 discovery requests with only a few weeks remaining prior to the December 1, 2011 deadline.

19 By contrast, Defendants have acted diligently throughout the limited discovery period
 20 allowed by Judge Burns. Indeed, in an effort to expedite their responses, ***Defendants*** contacted
 21 Plaintiffs (not the other way around) almost two weeks prior to the November 7, 2011 return date
 22 for their written responses, to discuss search terms and other aspects of Plaintiffs’ discovery
 23 requests. *See* Ex. 1, attached hereto. Plaintiffs began receiving documents from Defendants on a
 24 _____

25 ¹ Defendants did not oppose Plaintiffs’ request for an extension of the September 12, 2011
 26 deadline for Plaintiffs to file an amended complaint on the express condition that such “requested
 27 extension, if granted, will not modify or amend the case schedule in any way.” *See* Dkt. No. 134
 28 at 1.

² *See* Dkt. No. 59 at 7.

1 rolling basis on November 7, 2011. In particular, NAMM completed its document production on
 2 November 7, 2011; Yamaha completed its production on November 23, 2011; Guitar Center
 3 produced the bulk of its documents on November 17, 2011, and then completed its production on
 4 December 1, 2011; and Fender and KMC completed their productions on December 2, 2011.
 5 Likewise, Gibson and Hoshino, both of whom had responded to Plaintiffs' interrogatories on
 6 November 7, 2011, produced their document productions on December 9, 2011 and 12, 2011,
 7 respectively.³ With the agreed extension to December 23, 2011, Plaintiffs' time to complete the
 8 discovery was not different from the amount of time they allowed themselves when they originally
 9 delayed service of any written discovery.

10 Even though they had been in possession of certain Defendants' entire document
 11 productions for weeks—in NAMM's case, over a month—and even though all Defendants had
 12 served their answers to interrogatories in early November, Plaintiffs nevertheless waited until last
 13 Friday, December 9, 2011, to begin the meet and confer process for scheduling their very first
 14 deposition in the case. At the same time, Plaintiffs declared that they would be “not available” for
 15 any depositions on nearly half of the remaining business days prior to the December 23, 2011
 16 deadline. *See* Ex. 2, attached hereto. As of the date of this filing, Plaintiffs still have noticed only
 17 two depositions—one of a Yamaha representative and one of a NAMM representative—and have
 18 just begun to attempt to schedule another seven depositions.

19 Against this record, there is no good cause for Plaintiffs' instant request for an extension of
 20 the discovery deadline as to all Defendants until February 1, 2012. Plaintiffs' only purported
 21 justification for subjecting all Defendants to another five weeks of discovery is that they did not
 22 receive the last of the Defendants' completed document productions until December 12, 2011.
 23 That hardly constitutes the good cause necessary for the blanket five-week extension Plaintiffs
 24 now seek. As discussed above, Plaintiffs could and should have completed all discovery by no

25 _____
 26 ³ In an abundance of caution, Gibson is searching a backup drive for one custodian to determine
 27 whether it contains any additional responsive information. If any new material is on the drive,
 28 Gibson expects the volume to be very small (less than 20 documents) and does not expect it to
 reveal any material witnesses not already identified.

1 later than December 23, 2011 had they acted diligently. Not only did Plaintiffs delay filing their
2 amended complaint and then fail to serve any discovery until October 5, 2011, they compounded
3 that delay by failing to ask Defendants, much less move the Court, for expedited discovery
4 responses. The foreseeable result was that Defendants' written discovery responses would be due
5 no earlier than November 7, 2011, a mere three weeks before the original December 1, 2011
6 discovery deadline. Also, as described below in Part II, Plaintiffs unnecessarily resisted and
7 delayed conferring about the search protocol for electronic documents.

8 Plaintiffs should not be permitted now to rectify their lack of diligence by subjecting all of
9 the Defendants to another five weeks of discovery, especially given that this amount of time was
10 wasted at the beginning of this process due to the Plaintiffs' inaction. Plaintiffs already have
11 benefitted from one agreed-to extension of the discovery deadline and Defendants already have
12 incurred substantial burdens and costs through their diligent, complete responses. For example,
13 NAMM expended substantial time and resources to complete its discovery responses by
14 November 7, 2011, and it would be wholly unfair to now subject it to another five weeks of
15 discovery. The other Defendants are in similar positions.

16 Plaintiffs received interrogatory answers and a substantial percentage of total produced
17 documents from the Defendants—including completed productions from NAMM, Yamaha, Guitar
18 Center, Fender, and KMC—many weeks in advance of the current December 23, 2011 deadline.
19 Those interrogatory and document responses were more than sufficient for Plaintiffs to identify
20 many if not all of the individuals they would want to depose and then to schedule those
21 depositions in a timely manner. Moreover, at least some of the potential deponents in this matter
22 were identified by name in the First Amended Class Action Complaint (*see, e.g.*, Dkt. No. 136 ¶¶
23 107, 112), which defies any claim that the Plaintiffs needed discovery responses before beginning
24 discussions with the Defendants about any depositions. Plaintiffs could have requested Rule
25 30(b)(6) depositions at any point in time.

26 Thus, an extension of the discovery deadline is not supported by good cause. Defendants
27 have already incurred asymmetric burdens, costs (into the hundreds of thousands of dollars), and
28 distraction associated with this limited discovery period, and it would not be fair to subject

Defendants to even more. While that is true for all Defendants, it is especially true for those Defendants who produced complete discovery responses back in November and early December. Plaintiffs' motion for an extension should be denied.⁴

II. Plaintiffs Should Be Held To Their Negotiated Agreement Regarding Search Terms, Which Did Not Include the Abbreviations at Issue

A court must limit the scope of discovery if a requesting party has had "ample opportunity to obtain the information [it seeks] by discovery in the action" or "if the burden or expense outweighs its likely benefit." Fed. R. Civ. P. 26(b)(2)(ii), (iii). or both of these reasons, the Court should deny Plaintiffs' belated request for Defendants to run *additional* search terms through their ESI during this period of "limited" discovery. Defendants respectfully submit that the Court should, instead, insist that Plaintiffs abide by agreements negotiated in good faith regarding search terms (especially since the Defendants have already incurred substantial expense *as a result of the agreement* and this is supposed to be a *limited discovery period*).

Indeed, courts should be hesitant to second-guess agreements as to search terms:

The preferable method to reduce challenges [to the choice of search methodology] - advocated by the proponents of the 2006 Federal Rules Amendments and experienced practitioners - is for a full and transparent discussion among counsel of the search terminology. Where the parties are in agreement on the method and a reasonable explanation can be provided, it is unlikely that a court will second-guess the process.⁵

The Court should therefore deny Plaintiffs' request that Defendants be compelled to modify the agreements regarding search terms that were reached with Plaintiffs. In light of their respective agreements with Plaintiffs, Defendants should not be compelled to incur the substantial burden and expense of starting the document review process up again.

Generally, Plaintiffs ignore the fact that the terms already searched were selected and agreed upon because they were the terms that were most likely to produce responsive documents.

⁴ Alternatively, Plaintiffs should be required to show good cause before requesting additional discovery on any Defendant after the current December 23, 2011 discovery deadline.

⁵ The Sedona Conference Best Practices Commentary on the Use of Search and Information Retrieval Methods in E-Discovery, 8 Sedona Conf. J. 189, 204 (Fall 2007).

1 Consistent with Judge Burns' Order, Plaintiffs expressly agreed that some Defendants need only
 2 produce documents returned by the search that "refer to a discussion of MAP between [any
 3 defendants] during the relevant NAMM events, unless the documents solely concern products
 4 other than guitars, amps, or basses." All Defendants searched at least the following terms: "MAP,
 5 MAPP, SMAP, minimum advertised price*, suggested minimum advertised price*, NAMM,
 6 National Association of Music Merchants, global summit, global economic summit or GES."
 7 Most Defendants also searched the names of the other Defendants. Collectively, Defendants ran
 8 these terms through millions of documents. If a document referenced a discussion of MAP at
 9 NAMM between Defendants, it was likely returned by the terms searched.

10 The new search terms Plaintiffs have proposed would require some Defendants to review
 11 tens of thousands of additional documents that would likely yield only a very small number of
 12 additional responsive documents. Indeed, the overbroad search terms that the Defendants already
 13 ran yielded responsive documents only approximately 1 or 2 percent of the time—and as low as
 14 0.3% and 0.6% for two defendants—and there is no reason to think the abbreviations Plaintiffs are
 15 now requesting Defendants to run would generate any better results.

16 a. After Having Ample Opportunity To Request That The Abbreviations Be
 17 Searched, Plaintiffs Agreed To A Set of Search Terms That Did Not Include
 18 These Abbreviations

19 The undisputed facts overwhelmingly show that Plaintiffs had ample opportunity to
 20 previously ask Defendants to add abbreviations for certain Defendants' business names to their
 21 search terms, but failed to do so. *See* Fed. R. Civ. P. 26(b)(2)(ii). In fact, the abbreviations for
 22 MAP and NAMM were included. Instead, Plaintiffs expressly agreed that Defendants *did not*
 23 need to search for these abbreviations, and Plaintiffs must be held to those agreements now. *See* 8
 24 Sedona Conf. J. 189 at 204.

25 Before Defendants commenced their review of documents, they contacted Plaintiffs to
 26 meet and confer regarding the search terms for their ESI that the Defendants were planning to use.
 27 Some Defendants even contacted Plaintiffs weeks before their written responses to Plaintiffs'
 28 requests for production were due under the FRCP. Defendants did so because they wanted a

1 settled and mutually agreeable set of search terms at the outset, to avoid the burden and expense of
2 potentially having to re-do any review of their ESI. *See* 8 Sedona Conf. J. at 200 (recommending
3 “producing parties to negotiate with requesting parties in advance to define the parameters of
4 discoverable information” given the “costs and burdens” associated with searching ESI).

5 On October 31, 2011 and November 1, 2011, Plaintiffs declined Defendants’ offer to
6 discuss search terms, noting instead that Defendants should craft suitable searches on their own.
7 Plaintiffs’ rationale for refusing to engage in a discussion of search terms was disingenuous: They
8 claimed to be unable to propose any terms because Defendants had not provided them with their
9 companies’ organization charts or a list of the types of databases that the respective Defendants
10 possess. Obviously, Plaintiffs did not need this information to propose terms that would target
11 information as it appeared in the standard types of business documents (e.g., emails and word-
12 processing files) that they knew Defendants were searching. Plaintiffs’ missed opportunity to
13 augment the Defendants’ original search terms is therefore no one’s fault but Plaintiffs’.

14 On November 3, 2011 and 4, 2011, each Defendant (except NAMM, whose discovery
15 responses are not presently at issue) sent a letter to counsel for Plaintiffs detailing the specific
16 searches they were planning to run, which included variations on the key terms “MAP” and
17 “NAMM.” *See* Exs. 3-4, attached hereto. In other words, the original terms included the key
18 terms likely to generate discoverable information about discussions of MAP policies at NAMM
19 events. Even with the Defendants’ search terms in hand, Plaintiffs did not request any additional
20 search terms or raise any objections. Defendants therefore ran their searches and started reviewing
21 documents.

22 Weeks later, after several Defendants already had undertaken the substantial burden and
23 expense of reviewing documents—and after several of the Defendants had already substantially or
24 fully completed their productions—Plaintiffs contacted the Defendants to offer input regarding
25 search terms for the first time. Defendants could have reasonably refused this belated effort by
26 Plaintiffs to revisit search terms. Instead, each Defendant negotiated a specific agreement with
27 Plaintiffs to expand the search terms that Defendants had either already run or were in the process
28

1 of running; this agreement to expand the terms was part of an overall agreement that resolved all
 2 outstanding disputes related to the scope and timing of discovery. *See* Exs. 5-9, attached hereto.

3 Plaintiffs were not operating in a vacuum, as they now suggest. In addition to whatever
 4 investigation they conducted prior to filing their complaint, Plaintiffs had substantial document
 5 productions from Guitar Center, NAMM, and Yamaha—some of which included documents with
 6 abbreviations for Defendants' company names. In the individually-tailored agreements they
 7 reached with each Defendant, Plaintiffs specified a set of final search terms that Defendants would
 8 run, which did not contain any abbreviations for the Defendants' company names.

9 In short, Plaintiffs had ample opportunity to propose the abbreviations presently at issue as
 10 search terms but failed to do so until the Defendants had already produced (or begun to produce)
 11 documents pursuant to the parties' agreements on search terms and other aspects of the
 12 production. *See* Fed. R. Civ. P. 26(b)(2)(ii). Plaintiffs should be held to their agreements now.
 13 *See* 8 Sedona Conf. J. 189, 204.

14 b. Defendants Should Not Be Made To Incur The Burden And Expense of
 15 Searching For The Abbreviations

16 Apart from being an unfair departure from the parties' agreements, requiring Defendants to
 17 go back and run the abbreviations through their ESI would also create a substantial burden and
 18 expense for the Defendants, which is undue given the paltry number of discoverable documents, if
 19 any, that these new search terms would likely yield. *See* Fed. R. Civ. Proc. 26(b)(iii). Indeed, the
 20 search terms that the Defendants have already run were substantially overbroad, as demonstrated
 21 by the fact that they overwhelmingly returned documents that were not responsive to Plaintiffs'
 22 requests. For instance, for Fender and KMC, the search parameters they agreed to run netted a
 23 total of 125,427 pages of documents. Counsel spent in excess of 300 hours to review all of these
 24 documents, and at the end of the day found that a total of just 785 pages of documents were
 25 responsive, which is less than 0.6% of the total number of pages reviewed. Similarly, less than
 26 0.3% of the documents Yamaha reviewed based on the search terms ultimately proved to be
 27 responsive, while less than 2% of the documents Guitar Center reviewed based on the search terms
 28 ultimately turned out to be responsive. The fact that searching these abbreviations will likely yield

1 very few—if any—additional documents must be measured against the enormous burden and
 2 expense that this would create for certain Defendants.

3 **III. Minimum Advertised Price Policies are Beyond the Scope of the Court’s Order**
 4 **and Plaintiffs Should Be Held to Their Negotiated Agreement regarding**
 5 **Minimum Advertised Policies**

6 Plaintiffs’ document request asking for all Minimum Advertised Price (MAP) policies is
 7 far beyond the scope of Judge Burns’ Order.⁶ The Court’s Order states: “Discovery should be
 8 limited to who attended or participated in meetings alleged in the amended consolidated complaint
 9 and what was said or agreed to there.” (Dkt. No. 133 at 13). The Order clearly does not
 10 contemplate the open-ended production of MAP policies. Indeed, Plaintiffs have never even
 11 articulated what fact of consequence the MAP policies make more or less probable.

12 Further, over nearly two months, Defendants negotiated with Plaintiffs to see if they could
 13 reach agreement on this request. After a good faith negotiation, the parties agreed to narrow the
 14 scope of the request. The parties agreed that if the word search described above returned a non-
 15 privileged document reflecting a private meeting that occurred between defendants about the terms
 16 or effective dates of a MAP policy for a relevant product, and the discussion took place at one of
 17 the relevant NAMM shows, it would be produced. This search actually goes beyond the scope of
 18 what was contemplated by Judge Burns’ Order and would not have been conducted but for the
 19 parties’ agreement. The MAP policies themselves, to the extent they exist, have nothing to do
 20 with “any meetings alleged in the amended consolidated complaint,” and as Judge Porter
 21 suggested in the parties’ first status conference, this request goes far beyond the scope of anything
 22 contemplated by Judge Burns’ Order.

23 Relying on this agreement, Defendants incurred significant expense by searching and
 24 reviewing thousands of documents to determine if there were any which were responsive under the

26 ⁶ Plaintiffs’ actual request was for “[a]ll documents that reflect the terms and effective dates of any
 27 MAPP.” On its face, the request for all such documents is overboard, even if Judge Burns had
 28 allowed discovery of the policies themselves (which he did not).

1 parameters agreed upon. After receiving most of the Defendants' productions, Plaintiffs decided
 2 to renege on their agreement. In an effort to support their arguments in favor of an extension,
 3 Plaintiffs are trying move the goal posts at the end of the game. It would be unfair to burden
 4 Defendants with further expense by reviewing additional documents to locate MAP policies,
 5 which are clearly outside the scope of the Court's Order. The Court should deny Plaintiffs'
 6 motion to compel MAP Policies at this late hour.

7 DATED: December 15, 2011

CROWELL & MORING LLP

8 By: /s/ Daniel A. Sasse

9 Daniel A. Sasse
 10 Chahira Solh
 11 3 Park Plaza, 20th Floor
 12 Irvine, California 92614-8505
 13 Telephone: (949) 263-8400
 14 Facsimile: (949) 263-8414

15 Attorneys for Defendant Yamaha Corporation
 16 of America

17 DATED: December 15, 2011

LATHAM & WATKINS LLP

18 By: /s/ Christopher S. Yates

19 Margaret M. Zwisler, Esq.
 20 555 Eleventh Street, NW, Suite 1000
 21 Washington, DC 20004-2201
 22 Telephone: (202) 637-1092
 23 Facsimile: (202) 637-2201
 24 Margaret.Zwisler@lw.com

25 Christopher S. Yates, Esq.
 26 505 Montgomery Street, Suite 2000
 27 San Francisco, CA 94111-6538
 28 Telephone: (415) 395-8157
 Facsimile: (415) 395-8095
 Chris.yates@lw.com

Attorneys for Defendant Guitar Center, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: December 15, 2011

BAKER BOTTS LLP

By: /s/ Paul C. Cuomo

Paul C. Cuomo, Esq.
Stephen Weissman, Esq.
1299 Pennsylvania Avenue, NW
Washington, DC 20004-2402
Telephone: (202) 639-7700
Facsimile: (202) 639-7890
Paul.cuomo@bakerbotts.com
Stephen.weissman@bakerbotts.com

Attorneys for Defendant National Association
of Music Merchants, Inc.

DATED: December 15, 2011

**ECKERT SEAMANS CHERIN
& MELLOTT LLP**

By: /s/ Keith E. Smith

Charles F. Forer, Esq.
Neil G. Epstein, Esq.
Keith E. Smith, Esq.
50 South 16th Street, 22nd Floor
Philadelphia, PA 19102
Telephone: (215) 851-8400
Facsimile: (215) 851-8383
cforer@eckertseamans.com
nepstein@eckertseamans.com
ksmith@eckertseamans.com

Attorneys for Defendant Hoshino (U.S.A.),
Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: December 15, 2011

BRYAN CAVE LLP

By: /s/ J. Alex Grimsley

Lawrence G. Scarborough, Esq.
J. Alex Grimsley, Esq.
Two North Central Avenue, Suite 2200
Phoenix, AZ 85004-4406
Telephone: (602) 364-7000
Facsimile: (602) 364-7070
lgscarborough@bryancave.com
jagrimley@bryancave.com

Attorneys for Defendants Fender Musical
Instruments Corp. and KMC Music, Inc.

DATED: December 15, 2011

RILEY WARNOCK & JACOBSON, PLC

By: /s/ Tim Harvey

Steven A. Riley, Esq.
John Peterson, Esq.
Tim Harvey, Esq.
1906 West End Avenue
Nashville, TN 37203
Telephone: (615) 320-3700
Facsimile: (615) 320-3737
sriley@rwjplc.com
jpeterson@rwjplc.com
tharvey@rwjplc.com

Attorneys for Defendant Gibson Guitar Corp.

ECF ATTESTATION

The filing attorney attests that he has obtained concurrence regarding the filing of this document from the signatories to this document.

DATED: December 15, 2011

/s/ Daniel A. Sasse
Daniel A. Sasse

crowellmoring

3 Park Plaza, 20th Floor
Irvine, CA 92614-8505
(949) 263-8400

CERTIFICATE OF SERVICE

I, Daniel A. Sasse, hereby certify that all counsel of record who are deemed to have consented to electronic service are being served this 15th day of December, 2011, with a copy of this document via the Court's CM/ECF system. Any other counsel of record will be served by electronic mail and/or first class mail on the same date.

/s/ Daniel A. Sasse

Daniel A. Sasse

DCACTIVE-16990496.1

crowell
moring

3 Park Plaza, 20th Floor
Irvine, CA 92614-8505
(949) 263-8400